

person' upon whom the interest or liability of a party devolves or vests but should be read as mere conjunction introducing the words 'other person'.

Thus, it is our conclusion that, when at any stage of any proceedings, the plaintiff dies intestate, and his interests devolve or vest temporarily in the Official Assignee under s 39, until administration or probate is granted, the court has the discretion to order that his son or any other person be made a party under O 8 r 7(2), if the court 'thinks it necessary in order to ensure that all matters in dispute in the cause or matter may be completely determined and adjudicated upon'.

On the disputed facts of the present appeal, the High Court was clearly correct in upholding the order of the sessions court. We had accordingly dismissed the appeal but made no order as to costs.

Appeal dismissed.

Solicitors: *Mahindar & Co.*

Reported by *Prof Ahmad Ibrahim*

Pendaftar Hakmilik Negeri Kedah v Oversea-Chinese Banking Corp Ltd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 01-39 OF 1990
MOHAMED AZMI, GUNN CHIT TUAN AND JEMURI SERJAN SCJJ
30 MARCH 1991

Land Law — Registrar's caveat — Registrar's caveat entered to secure that land will be able to satisfy debt due to Federation — Land previously charged under four charges to the respondent bank — Order for sale of land obtained by respondent — Whether registrar had wrongly exercised his discretion to enter caveat — National Land Code 1965, ss 320, 340 & 418

In this case the owner of a piece of land in Alor Star, Kedah, had in all executed four separate charges from 1917 to 1982 in favour of the respondent. In 1986 the Registrar of Titles, Kedah (the appellant), received a letter from the Department of Inland Revenue, Kedah, requesting him to enter a registrar's caveat under s 320 of the National Land Code 1965 in respect of the property on the grounds that the registered proprietor was owing income tax to the department. The registrar's caveat was entered against the said property and notice of it was given to the registered proprietor. Subsequently in 1988 the respondent obtained an order for the sale of the property. The respondent then received a letter from the appellant confirming the entry of the registrar's caveat. The respondent filed a notice of motion to appeal under s 418 of the National Land Code 1965 against the appellant's decision to enter the said caveat. The learned judge of the High Court held that when the appellant entered the registrar's caveat, he had failed to take into consideration the fact that there were registered charges on the said land as well as other relevant matters and therefore the decision to enter the registrar's caveat was ultra vires his powers under s 320(1)(ba) of the National Land Code 1965. See [1990] 2 MLJ 478. The appellant appealed.

A Held, dismissing the appeal:

The appellant in this case had not exercised his discretionary powers according to and within the limits set out in the provisions of s 320(1)(ba) of the National Land Code 1965 because he had failed to take relevant considerations into account. As he had not acted judiciously or reasonably within the ambit and scope of that section, he had therefore exceeded his powers under the section and has therefore acted ultra vires and his act was therefore invalid. The learned judge was therefore correct in ordering the said registrar's caveat to be cancelled under s 418 of the National Land Code 1965.

B [Bahasa Malaysia summary]

Di dalam kes ini tuannya sekeping tanah di Alor Star, Kedah, telah menggadaikan tanah dengan empat gadaian dari 1971 hingga 1982 kepada responden. Pada tahun 1986 Pendaftar Hakmilik Kedah (perayu) telah menerima surat dari Jabatan Hasil Dalam Negeri, Kedah, memintanya memasukkan kaveat pendaftar di bawah s 320 Kanun Tanah Negara 1965 terhadap tanah itu oleh kerana tuannya tanah belum menjelaskan cukai pendapatan kepada Jabatan itu. Kaveat pendaftar itu telah dimasukkan terhadap tanah itu dan notisnya telah diberi kepada tuannya tanah itu. Kemudiannya pada tahun 1988 responden telah mendapat perintah untuk penjualan tanah itu. Responden telah diberi surat dari perayu mengesahkan kemasukan kaveat pendaftar itu. Responden telah memfailkan notis rayuan di bawah s 418 Kanun Tanah Negara 1965 terhadap keputusan perayu memasukkan kaveat itu. Yang arif hakim Mahkamah Tinggi memutuskan bahawa apabila perayu memasukkan kaveat pendaftar itu, ia telah tidak mengambilkira kenyataan bahawa terdapat beberapa gadaian didaftar terhadap tanah itu dan juga lain-lain perkara dan oleh kerana itu keputusan memasukkan kaveat pendaftar itu adalah ultra vires kuasanya di bawah s 320(1)(ba) Kanun Tanah Negara 1965. Perayu telah membuat rayuan.

D Diputuskan, menolak rayuan itu:

Perayu di dalam kes ini telah tidak menjalankan kuasa budibicaranya mengikut dan di dalam batas yang dikenakan oleh peruntukan s 320(1)(ba) Kanun Tanah Negara 1965 oleh kerana ia telah tidak mengambilkira perkara-perkara yang berkaitan. Oleh kerana ia telah tidak menjalankan kuasanya dengan bijaksana dan munasabah di dalam lingkungan dan skop seksyen itu, ia telah melampaui kuasanya di bawah seksyen itu dan telah bertindak secara ultra vires dan tindakannya itu adalah tak sah. Hakim yang arif oleh kerana itu telah betul memerintahkan kaveat pendaftar itu dibatalkan di bawah s 418 Kanun Tanah Negara 1965.

E Legislation referred to
National Land Code 1965 ss 320(1)(ba), 321, 418, 431

H Appeal from: Originating Motion No 25-37-89 (High Court, Alor Setar)

I Dato' Haji Abdul Malek bin Haji Ishak (Legal Adviser, Kedah) for the appellant.
Porres P Royan (*Mary S Nitchingham* with him) for the respondent.

Cur Adv Vult

Gunn Chit Tuan SCJ (delivering the judgment of the court): This appeal was the result of the entry of a registrar's caveat under the provisions of s 320(1)(ba) of the National Land Code 1965. The facts of the case

were that as far back as 8 February 1971, one Tan Bok Lean, the chargor, executed a legal charge over his property No SPB Grant 64992 mukim of Alor Setar, Kota Setar, in favour of the Oversea-Chinese-Banking Corp Ltd (hereinafter referred to as 'the respondent') to secure a loan of \$30,000. The said charge was registered on 8 March 1971. On 12 September 1974, Tan Bok Lean executed a second legal charge over the same property to secure a loan of \$15,000. The said charge was registered on 16 September 1974. And on 8 September 1979, a third legal charge was executed in favour of the respondent to secure another loan of \$15,000 over and above the existing loan of \$45,000. The third legal charge was registered on 23 September 1979. Finally a fourth legal charge was executed on 19 May 1982, in favour of the respondent again to secure another loan of \$60,000 over and above the existing loans of \$60,000. That legal charge was registered on 26 May 1982.

On 14 August 1986, the Registrar of Titles, Kedah (hereinafter referred to as 'the appellant') received a letter from the Department of Inland Revenue, Alor Setar, Kedah, requesting him to enter a registrar's caveat under s 320 of the National Land Code 1965 in respect of the said property of Tan Bok Lean on the grounds that he, Tan Bok Lean, 'ada berhutang cukai pendapatan kepada Jabatan ini dan belum lagi jelas jumlah berkenaan. Untuk menjaga kepentingan kerajaan dalam hal ini, sila tuan masukkan kewet pendaftar di bawah s 320 Kanun Tanah Negara'. And on 18 August 1986, at 10am, a registrar's caveat was entered against the said property and the Department of Inland Revenue, Alor Setar, Kedah, was so informed by a letter from the appellant dated 18 August 1986. Tan Bok Lean himself was also informed of the entry of the registrar's caveat on 19 April 1987, by way of service of a notice under s 431(1)(c) of the National Land Code 1965. The said notice was in Form 19A in accordance with the provisions of s 321(2) of the said Code.

However, on 3 April 1988, the respondent obtained an order for sale of the said property to satisfy the sum of \$126,048.19 due from Tan Bok Lean as at 8 February 1987 with interest at 12.75% pa on monthly rests to date of realization. But the respondent only received a letter dated 14 August 1989, in reply from the appellant confirming the entry of a registrar's caveat against the said property, and on 20 September 1989, it proceeded to file a notice of motion in court to appeal under s 418 of the National Land Code 1965 against the appellant's decision to enter the said caveat. The respondent was then also served with a Form 19A on 4 October 1989 to inform it officially of the entry of the registrar's caveat. The said notice of motion was heard by the High Court at Alor Setar on 14 February 1990, when decision was reserved to 22 April 1990, on which date the respondent's

A appeal was allowed and the registrar's caveat was ordered by the High Court to be cancelled and that costs incidental to the application be taxed and paid by the appellant. [See [1990] 2 MLJ 478.]

B The appellant, being dissatisfied with the decision of KC Vohrah J, appealed against the whole of the said decision on 25 April 1990, and in its memorandum of appeal dated 5 June 1990, raised the following one ground of appeal:

YA Hakim yang membicarakan kes silap di sisi undang-undang semasa mentafsirkan peruntukan s 320(1)(ba) Kanun Tanah Negara.

C It was not disputed that the registrar's functions under the provisions of s 320 of the National Land Code are not exclusively ministerial and that he exercises a discretion, albeit not totally unfettered, which is quasi-judicial in nature. It was also not disputed in this case that the registrar did not make his decision mala fide when he entered the caveat against the said property. After hearing submissions of counsel, the learned judge considered the issue was whether the registrar had acted ultra vires his powers under s 320(1)(ba) of the National Land Code when he entered the said caveat and came to the conclusion that the registrar had failed to take into proper consideration the fact that there were charges on the said land as well as other matters and that his decision to enter the registrar's caveat in the context of the ultra vires doctrine was not proper. His Lordship therefore allowed the appeal to the High Court and ordered that the registrar's caveat be cancelled.

F It was the contention of Dato' Haji Abdul Malek bin Haji Ishak, the learned Legal Adviser, Negeri Kedah Darulaman, before us that the learned judge had erred in holding that in the instant case the registrar in entering the caveat had wrongly exercised his discretion under s 320(1)(ba) of the National Land Code because once there is a charge in respect of the land, the registrar's caveat is incapable of being entered in respect of the land for it could not possibly appear, according to KC Vohrah J, 'necessary or desirable' to the registrar 'for securing that the land will be available to satisfy the whole or any part of the debt due to the Federation since the caveat will not transform an unsecured debt into a secured debt, let alone give a debt a priority over other registered interests in the land.'

I Be that as it may, on examination of the appeal records in this case, we found in para 6 of the affidavit-in-reply of Haji Ghazali bin Haji Yahya, the Registrar of Land Titles, Alor Setar, Kedah Darulaman, dated 11 October 1989, a reference to the letter received by him from the Department of Inland Revenue dated 14 August 1986. That letter was marked as an exhibit of his affidavit and was as follows:

Tuan,

Tan Bok Lean (k/p 2228552)
Kewet pendaftar seksyen 320 KTN

Berhubung dengan perkara dan sipenama di atas sila maklumkan bahawa beliau ada berhutang cukai pendapatan kepada Jabatan ini dan belum lagi jelas jumlah berkenaan. Untuk menjaga kepentingan kerajaan dalam hal ini sila tuan masukkan kewet pendaftar di bawah seksyen 320 Kanun Tanah Negara di atas harta harta berikut:

Geran	Mukim	Daerah
SP 64992	Alor Setar	Kota Setar

The registrar then stated in paras 7 and 8 of his said affidavit that upon receiving the said exhibit referred to above, it appeared to him:

... that it was necessary to protect the interests of the Federation and it was also apparent that taking into consideration the provisions of sub-s (1)(ba) of s 320 of the National Land Code 1965, the said land belonging to the said Tan Bok Lean will be available to satisfy the whole or part of any debt due to the Jabatan Hasil Dalam Negeri. Having ascertained that the said land was registered in the name of Tan Bok Lean, the registrar duly entered a registrar's caveat on 18 August 1986.

Having perused the judgment, we cannot but agree with the learned judge when he stated that:

... the registrar did not rely on anything beyond the letter of the Department of Inland Revenue requesting for his caveat to be lodged on Tan Bok Lean's land. The letter itself states precious little. We know that for the purpose of para (ba) of s 320(1) whether the debt is secured or unsecured is an irrelevant consideration to be taken into account. Also irrelevant is whether judgment on the debt has been obtained. But while the lack of information on these matters is not material, it does not follow that other material matters should not be taken into account for the purpose of the provision.

We are of the view that the learned judge was not wrong in law when he considered the provisions of s 320(1)(ba) of the National Land Code and stated as follows later on his judgment:

In the context of looking at the value of the residue that would be available to the owner of the land after a sale of the land it is reasonable to expect the registrar to be seized of the value of the debt owed to the government, the value of the land and the value of the debt for which the charges on the land were created. He cannot act on airy fairy surmises nor can he make unwarranted inferences from information which is scanty.

If the value of the charges in respect of the land equals or exceeds the value of the land there cannot be any surplus for the landowner and it is hard to see how it can possibly appear to the registrar that it would be necessary or desirable for securing that the land 'will be available to satisfy the whole or part of' the debt due to the Government. Thus the registrar has to have vitally important information relating to the value of the government debt, the land and the debt or debts covered by the charges before he can make a proper decision whether to enter the registrar's caveat.

- A In this case, it would appear to us, as it did to the registrar, that it was necessary or desirable to secure that the land in question will be available to satisfy a debt due to the Federation. But in order to enable him to decide whether that land will be available to satisfy the whole or part of the debt due to the Federation, surely he must find out before exercising his discretion under the provisions of s 320(1)(ba) of the National Land Code the market value of the land in question, the amount of debt due on any registered charge or charges and also the value of the debt owed to the government. If the debt due on any prior charge or charges exceeds the market value of the land, then we too like the learned judge cannot see how the land in question would be available to satisfy the whole or any part of any debt due to the Federation bearing in mind the indefeasible interest of the chargee under s 340 of the National Land Code. In this case, the registrar had decided to enter the registrar's caveat against the land in question without all those information on several material matters which need to be considered by him before he decided to enter the registrar's caveat. He had therefore not exercised his discretionary powers according to and within the limits set out in the provisions of s 320(1)(ba) of the National Land Code because he had failed to take relevant considerations into account. As he has not acted judiciously or reasonably within the ambit and scope of that section, he has therefore exceeded his powers under that section and has therefore acted ultra vires and his act was therefore invalid. The learned judge was therefore correct in ordering the said registrar's caveat to be cancelled under s 418 of the National Land Code and we would therefore also dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Shook Lin & Bok.*

Reported by *Prof Ahmad Ibrahim*

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